## SINGAPORE REPORTS

# NGAI HENG BOOK BINDER PTE. LTD. v. SYNTAX COMPUTER PTE. LTD.

**[A.C.J. (Chao Hick Tin J.C.) 12 March 1988]**

**[Singapore – Magistrate's Court Suit No. 7313 of 1987]**

*Civil Procedure – Summary judgment – Claim for specific sum – Leave to defend ought to be given – R.S.C. 1970, O. 14 r. 3(1).*

In the present case, the plaintiffs were given interlocutory judgment on an application for summary judgment. The plaintiffs claimed for a specific sum. The defendants appealed against the decision.

**Held**, allowing the appeal: (1) leave ought to be granted to the defendants to defend the action;

(2) as the affidavits and defence filed raised questions of fact and law, interlocutory judgment with damages to be assessed was not the proper order to make. Such an order should only be given in a case where unliquidated damages are claimed and the defendant fails to establish a right to defend. The present action concerns a specific sum and as that is seriously disputed by the defendants and summary judgment may not be entered for the sum claimed or part thereof, leave to defend should have been given.

*Cases referred to:*

(1) *Contract Discount Corporation Ltd.* v. *Furlong & Ors.* [1948] 1 All E.R. 274 (folld).
(2) *Ochse* v. *Duncan* (1887) 3 T.L.R. 220 (folld).
(3) *Lynde* v. *Waithman* [1895] 2 Q.B. 180 (folld).

HIGH COURT.

*Cheah Kok Lim* for the defendants/appellants.

*Jayaram Balasubramaniam* for the plaintiffs/respondents.

*Cur. Adv. Vult.*

**Chao Hick Tin J.C.**: This is an appeal by the defendants against the decision of the Deputy Registrar of the Subordinate Courts where the latter gave interlocutory judgment for the plaintiffs with damages to be assessed on an Order 14 application for summary judgment.

The facts of the case, as appear from the pleadings and affidavits, are as follows. The plaintiffs' claim is for the sum of $8,050 being monies due from the defendants in respect of printing charges and other materials supplied by the plaintiffs to the defendants. The defendants in their defence filed did not deny that they had requested the plaintiffs to do certain works, *i.e.* colour separation and printing. What they contended was that there was no prior agreement on the charges for the works and that there was an implied term that the charges would be reasonable and would be subject to mutual agreement. The defendants alleged that the charges claimed by the plaintiffs as set out in the invoices were unreasonable and excessive. The defendants requested the plaintiffs to give a breakdown of their charges to show how much was for colour separation and how much was for printing. The plaintiffs refused to accede to the request saying that they were not obliged to draw their invoices in that manner. The plaintiffs in turn said that the works were carried out on an urgent basis as requested by the defendants and no quotation was given. They, however, denied that the charges were subject to mutual agreement and in any event asserted that their charges were reasonable. The plaintiffs also alleged that the defendants did not raise any objection to the invoices until after the service of this writ of summons. To this, the general manager of the defendants said that he told the plaintiffs' representative many times before on the telephone that the defendants refused to pay the invoices unless they were adjusted.

From the pleadings and the affidavits filed by both parties, it is quite clear that there are disputes on facts and law. The defendants conceded that they are liable to pay reasonable charges for the works but not the charges actually claimed by the plaintiffs.

On the hearing of the appeal before me, counsel for the defendants argued that where, as in this case, the claim is for a liquidated sum, and the defendants have denied that the specific sum is due to the plaintiffs and as the affidavits show, there are disputes on facts and law, leave to defend should be given and not an order for interlocutory judgment with damages to be assessed. In the statement of claim, other than the sum of $8,050 and costs, nothing else is claimed.

Counsel for the defendants submitted that if the price of goods sold or services rendered had not been agreed, then the law would imply that a reasonable price would be paid and that could only be determined at a proper trial – see para 1892 of Chitty on *Contracts* (24th Ed.).

Order 14 rule 3(1) of the Rules of the Supreme Court provides that unless there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part of a claim "*the court may give such judgment* for the plaintiff against (the) defendant *on that claim or part* as may be just

*having regard to the nature of the remedy or relief claimed.*" Therefore, the remedy prayed for in the statement of claim is important.

In *Contract Discount Corporation Ltd.* v. *Furlong & Others*[1] a case under Order 14 and where the plaintiffs claimed £19,811 and the defendants admitted owing a sum of £10,000 "or thereabouts", the High Court gave leave to defend subject to payment into court of £10,000. The Court of Appeal reduced it to £8,000 because of the expression "or thereabouts", which in its view meant that the defendants were entitled to an allowance by way of margin. What is of interest to note is what Asquith L.J. said at p. 277: "If there had been no admission by the defendants in their affidavit in opposition, I do not think that the order appealed from could have been supported but an account would have had to be directed as to the whole sum."

In *Ochse* v. *Duncan*[2] where the action was upon a bill for £799 for millinery and articles of dress ordered by the defendant from the plaintiff, the Master under an Order 14 application gave the defendant leave to defend upon bringing £650 into court or giving security for that amount. The defence raised in the affidavits was that the defendant had not received all the articles and that the charges were excessive. On appeal by the defendant, the Divisional Court gave the defendant unconditional leave to defend. On further appeal by the plaintiff to the Court of Appeal, the decision of the Divisional Court was upheld.

Another pertinent case is *Lynde* v. *Waithman.*[3] There, a mortgagee, who had appointed a receiver to receive rents, brought an action specially indorsing the writ with a claim for the mortgage debt and interest and applied for summary judgment. The Court of Appeal held that as there appeared to be a question as to what was the exact amount due to the mortgagee from the mortgagor, leave to defend was granted. Kay L.J. said at p. 186:

"The writ has no doubt been indorsed with a claim for a liquidated amount, but the evidence, as it stands, appears to me to raise a question whether the amount so claimed is due or not and whether a judge might not properly say that there must be an account of what the receiver has received before there can be a judgment on the claim. Therefore, it appears to me that the case is not a proper case for the application of Order XIV."

While the fact-situations in the above cases are not identical to the present case, the basic issue that presented itself in those cases is similar to the present: does Order 14 apply, where liability is not denied but the specific amount claimed is disputed? It seems to me clear, in the light of those authorities, that leave ought to be granted to the defendants to defend the action. The claim is for the sum of $8,050. There is no alternative claim for unliquidated damages. As the affidavits and defence filed raised questions of fact and law, interlocutory judgment with damages to be assessed is not the proper order to make. It seems to me that such an order should only be given in a case where unliqudated damages are claimed and the defendant fails to establish a right to defend. The present action concerns a specific sum and as that is seriously disputed by the defendants and summary judgment may not be entered for the sum claimed or part thereof, leave to defend should have been given.

Accordingly, the appeal is allowed and the defendants are given unconditional leave to defend the action.

*Appeal allowed.*

Solicitors: *R.C.H. Lim & Co.; Bala & Partners.*

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## CITY CAR RENTALS & TOURS PTE. LTD. v. SIM JWEE KIAT

**[O.C.J. (Thean J.) 30 January 1988]**

**[Singapore – Suit No. 3288 of 1983]**

*Bailment – Whether bailee was negligent – Whether there was breach of contract of bailment – Whether hiring agreement limited bailee's liability in damages.*

By a hiring agreement, the plaintiffs hired a car to the defendant for a period of time at a certain rate of payment. The defendant while driving the car met with an accident. The car had skidded and collided into a boulder. The plaintiffs claimed against the defendant damages for breach of contract and for negligence. The defendant resisted the claim of the plaintiffs, contended that he was not negligent and that by virtue of clause 5(b) of the agreement his liability for damages was limited to $1,000.

**Held**: (1) the defendant must have been driving the car so fast in the circumstances and failed to manage and control the car so as to avoid the collision. He had not discharged the burden of proving that the accident happened without his fault;